

LAND USE BOARD MINUTES
March 20, 2013

The Tewksbury Township Land Use Board met in a regularly scheduled meeting on the above date in the Municipal Meeting Hall, 60 Water Street, Mountainville, New Jersey. The meeting was called to order at 7:30 p.m.

Present: Blake Johnstone, Mary Elizabeth Baird, Bruce Mackie, Michael Moriarty, Shirley Czajkowski, Ed Kerwin, Robert Becker, Alt. #1 arrived at 7:41 p.m., Eric Metzler, Alt. #2 and Ed D'Armiento, Alt. #3

Also present: Dan Bernstein, Land Use Board Attorney, William Burr, Land Use Board Engineer, Dennis Allen, Zoning Officer and Shana L. Goodchild, Land Use Administrator.

Absent: Shaun Van Doren, Dana Desiderio, Elizabeth Devlin, and David Larsen, Alt. #4.

There were approximately twenty-one (21) people in the audience.

Ms. Goodchild introduced and welcomed Dennis Allen, the new part time Zoning Officer for Tewksbury Township. She noted that his office hours are Tuesday and Thursday, 8:30 a.m. to 4 p.m. The Board welcomed Mr. Allen.

OPEN PUBLIC MEETING ACT STATEMENT

Mr. Johnstone opened the meeting by announcing that adequate notice of the meeting had been provided by posting a copy thereof on the Police/Administration Building bulletin board, faxing a copy to the Hunterdon Review and the Hunterdon County Democrat, and filing with the Municipal Clerk, all on January 04, 2013.

PLEDGE OF ALLEGIANCE

Those present stood and pledged allegiance to the American flag.

CLAIMS

Mr. Johnstone asked the Board if there were any questions or comments regarding the following claims to which the response was negative. Mrs. Baird made a motion to approve the claims listed below and Mr. Moriarty seconded the motion. The motion carried by the following roll call vote:

1. Bernstein & Hoffman – Attendance at 3-6-13 LUB meeting (Brian Schwartz) – invoice dated March 7, 2013 (\$450.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Stavola Quarries, invoice dated March 5, 2013 (\$187.50)
3. Bernstein & Hoffman – Land Use Board Escrow – JCP&L, invoice dated February 25, 2013 (\$1,650.00)

Roll Call Vote:

Those in favor: Mrs. Baird, Mr. Mackie, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. Metzler, Mr. D'Armiento and Mr. Johnstone

Those Opposed: None

CORRESPONDENCE

A motion was made by Mrs. Baird and seconded by Mr. Moriarty acknowledging receipt of the following items of correspondence. All were in favor.

1. A copy of a letter dated March 7, 2013 from Shana Goodchild to the Mayor and Township Committee re: Foundation Location Surveys.
2. The NJ Planner, January/February, Vol. 74, No. 1.
3. A letter dated March 4, 2013 from Daniel Bernstein re: Stavola Quarry Resolution.
4. A memo dated March 13, 2013 from Roberta Brassard, Township Clerk re: Master Plan Consistency Review of Ordinance No. 13-2013.

ORDINANCE REPORT

Mr. Mackie reported on a solar ordinance from Bedminster Township. Mr. Mackie noted that the ordinance was very timely as the Tewksbury Environmental Commission plans to attend an upcoming Land Use Board meeting to discuss solar ordinances.

Resolutions

- **Resolution No. 13-04** - Stavola Quarries, Appl. No. 11-10, Block 44, Lot 24
Eligible to vote: Mrs. Baird, Mr. Mackie, Mrs. Devlin, Mr. Moriarty, Mr. Kerwin, Mr. Shapack, Mr. D'Armiento and Mr. Johnstone

Mr. Bernstein noted that the applicant's attorney was present and explained that there has been a change since the public hearing.

Michael O'Grodnick was present and explained that during the hearing they noted a 50 foot right-of-way however they need to reduce it to 35 feet because the Tewksbury Fine Wine and Spirits building is only 38 feet away. Mr. O'Grodnick noted that the right-of-way is for a future driveway or road to the 15.5 acre lot created. Mr. Bernstein noted that the resolution contains a condition that there is no guarantee to the number of lots they will ultimately get. Mr. Bernstein amended the draft resolution to read 35 feet for the right-of-way and recommended to the Board that they adopt it as prepared.

There being no questions or comments from the Board Mr. Johnstone opened the meeting up to the public for questions regarding the proposed change. There being no questions from the public, Mr. Johnstone closed the meeting to the public.

Mrs. Baird made a motion to adopt the following resolution. Mr. Moriarty seconded the motion. The motion carried by the following roll call vote:

LAND USE BOARD

TOWNSHIP OF TEWKSBURY
APPLICATION #11-10
RESOLUTION # 13-04

WHEREAS, STAVOLA QUARRIES, LLC has applied to the Land Use Board of the Township of Tewksbury for a minor subdivision and a planning variance for property which is located at 30 Rockaway Road and designated as Block 44, Lot 24 on the Tewksbury Township Tax Map, which premises are located in the HL (Highlands), M (Mining), and PM (Piedmont) Zones, and

WHEREAS, the application was presented at the September 5, 2012 Land Use Board meeting by Attorney Michael P. O'Grodnick, Esq. of the firm of Mauro, Savo, Camerino, Grant & Schalk, P.A.; Civil Engineer Alfred Coco, P.E., P.L.S., of the firm of Menlo Engineering Associates, Inc.; and Gary Vialonga, President of Stavola Realty and an authorized representative of Stavola Quarries, LLC, and

WHEREAS, the application was reviewed by Land Use Board engineer William H. Burr, IV, P.E. of the firm of Maser Consulting, P.A., and

WHEREAS, the Board after considering the evidence presented by the applicant, Mr. Burr, and members of the public, has made the following factual findings:

A. The Subject Property.

1. The subject property consists of 316.97 acres with approximately 271.61 acres being located in Tewksbury Township and approximately 45.36 acres being located in Readington Township.

2. The north branch of Rockaway Creek, a c-1 stream, is located on the western side of the property along the boundary between Tewksbury Township and Readington Township. Adjoining the stream in both Tewksbury Township and

Readington Township are 300 foot wide riparian buffers and flood hazard areas which together encompass about 80 acres.

3. About 160 ± acres in Tewksbury Township are located in the M Zone. The land in the M Zone has 2,260.74 feet of frontage along Rockaway Road and 1,672.34 feet of frontage along Potterstown Road. The property in the M Zone is developed with several structures, including a crushing plant, that are related to the quarry operation. The property has been used as a quarry for mining construction aggregates, including crushed stone and sand. In March of 2008 Tewksbury Township and Stavola Quarries, LLC entered into a settlement agreement which established the boundary limits for the quarry. The limits are shown on the subdivision plans with the quarry to be located entirely within Proposed Lot 24.03 in the M Zone.

4. About 15.55 acres in Tewksbury Township is located in the PM Zone. Access to this property will be provided by a 35 foot wide access easement through Lot 24.01, Block 44 which has frontage on Oldwick Road (County Route 517). Lot 24.01 is also owned by Stavola Quarries, LLC and is improved with a one-story building which is occupied by Tewksbury Fine Wine. The 15.55 acre parcel adjoins Prospect Avenue, a paper street which was dedicated in 1921 as a public street but was never accepted by Tewksbury Township.

5. About 95 ± acres in Tewksbury Township are located in the HL Zone. The land in the HL Zone has 4,267.63 feet of frontage on Potterstown Road. There are 4,044.24 feet of frontage on Rockaway Road, some of which is in the HL Zone, and most of which is on that portion of the site located in Readington Township.

6. The property which is located within the HL and PM Zones is vacant, wooded, and undeveloped.

B. The Proposal.

7. The applicant proposes to subdivide its tract into three lots which will follow the Zone boundaries. The subdivision plan shows those three Lots roughly following the Zone boundaries. The applicant's engineer agreed to revise the plans so that the Lots would precisely follow the Zone boundaries.

8. Proposed Lot 24.02 will encompass the 15.55 acres in the PM Zone.

9. Proposed Lot 24.03 will encompass the 160 ± acres in the M Zone.

10. Proposed Lot 24.04 will encompass the 95 ± acres in the HL Zone.

11. Proposed Lot 24.02 will contain 15.55 acres while the minimum lot size in the PM Zone is five acres. The minimum lot width will be 374 feet, while the zoning ordinance requires a minimum lot width of 300 feet in the PM Zone. It contains 732 feet along Prospect Avenue, which has never been accepted by Tewksbury Township. Access will be provided through a 35 foot wide access easement through Lot 24.01 to Oldwick Road.

12. Proposed Lot 24.03 contains 160 ± acres while the minimum lot size in the M Zone is 100 acres. Certain of the existing structures on that Lot including a garage and a scale house are located within about 25 feet of the front yard on Rockaway Road, while the required front yard setback in the M zone is 500 feet. A variance is not required for these prior nonconforming structures. However, if the structures are

destroyed, then the replacement structures will need to meet the then existing front and side yard setback requirements.

13. The 95 ± acres in the HL Zone meets the minimum lot size of 12 acres.

14. A planning variance would have been required under N.J.S.A. 40:55D-36 if the applicant had requested a structure on proposed Lot 24.02. Since no structure is requested at this time, that approval is not currently required. There is no assurance as to what may be developed on Proposed Lot 24.02. See condition 5 herein.

C. Equestrian Easement.

15. A number of residents asked questions and made statements at the public hearing.

16. Kathy Foster of 61 Welsh Road noted that there were equestrian trails through the property which was a critical link between the Cold Brook Preserve and the Whittemore Preserve. She asked if the applicant would grant an equestrian easement.

17. Gary Vialonga said that the applicant would consider granting an easement if and when it appeared before the Land Use Board to subsequently develop the property. He noted that there were Federal safety requirements in the mining zone which the applicant had to comply with.

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 20th day of March 2013 that the application of Stavola Quarries, LLC be approved in accordance with a plan titled: “Stavola – Tewksbury, 30 Rockaway Road, Township of Tewksbury, Hunterdon County, New Jersey, Overall Plan, Block 44, Lot 24, Tax Map Sheet: 316.97” (consisting of 3 sheets) as prepared by

Alfred R. Coco, P.E., L.S. of Menlo Engineering Associates, Inc., dated May 25, 2011, last revised July 30, 2012 subject, however, to the following conditions:

1. Conditions recommended by Land Use Board Engineer William H. Burr, IV., P.E. in his memorandum of August 9, 2012 as revised by the Land Use Board:

“TECHNICAL REVIEW:

1. There are discrepancies with respect to the proposed individual lot areas between the subdivision plan and the respective zoning tables. The plans must be revised to clarify the proposed lot areas. I would recommend an Area Summary Table be provided on the plans to include the “gross” and “net” areas for all existing and proposed lots, including all right of way dedication areas, as well as, the portion of the tract located within Readington Township. *The applicant agreed to make these corrections.*
2. In accordance with Township Master Plan, all frontages should be dedicated to 25 feet from the roadway centerline for a total right of way of 50 feet. Testimony must be provided to clarify the existing and proposed rights of way along Potterstown Road and Rockaway Road. The plans call for a variable right of way along much of the frontages; however, it is unclear whether additional right of way is proposed to be dedicated? *The applicant agreed to make this correction.*
3. Testimony shall be provided to support the proposed variance for Lot 24.02 since this lot does not abut a public street. The applicant’s attorney has stated previously that a variance is not necessary because this lot will front on a paper street known as Prospect Avenue which connects to County Route 517 adjacent to Hildebrandt nursery. However, in a May 30, 2012 letter to the Board, Board Attorney, Dan Bernstein, refutes this claim because there is no record that Prospect Avenue was ever accepted by the municipality as a public road; therefore, necessitating the need for a variance. *The applicant applied for the necessary variances. In the event that the applicant cannot satisfy the Land Use Board Attorney and Land Use Board Engineer that there is an existing easement to Lot 24.02, then in that event a 35 foot wide easement will be provided through Lot 24.01.*
4. Testimony shall be provided to confirm whether there are any structures located on the subject property other than those which are part of the quarry operations and are to remain on proposed Lot 24.03. *This was confirmed at the public hearing.*
5. According to the subdivision plans, variances are required for the pre-existing non-conformities with respect to front and side yard encroachments of structures that are present on proposed Lot 24.03. Testimony shall be provided to support

- the granting of these variances. *These structures are prior nonconforming structures which do not require variances.*
6. The zoning table for proposed Lot 24.02 on Sheet 1 of the plans must be revised to reflect the variance that is required for this lot. *The zoning table will be revised to show that these are prior nonconforming structures.*
 7. According to the application form, the applicant proposes to subdivide the property into three (3) lots along the Township Zone lines. I note, however, that the proposed subdivision line between Lots 24.03 and 24.04 as shown on the submitted plans does not coincide exactly with the zone boundary line. Testimony shall be provided to clarify why there are slight discrepancies between the proposed lot lines and the zoning district boundaries on these lots. *The plans shall be revised to show lots exclusively within the zone boundary lines.*
 8. The subdivision plan must be revised to clarify the lot coverage and floor area ratio for each lot in the zoning tables. The current plans reflect these values as “T.B.D.”; however, they should be revised to reflect the actual values or zero if appropriate. *The necessary revisions shall be made.*
 9. The subdivision plan should be revised to eliminate the portions of the building envelope on proposed Lot 24.04 that are situated with critical areas – i.e. riparian buffer area/flood hazard area. *The plans will be corrected accordingly.*
 10. Points of beginning (P.O.B.) for the proposed lots should be shown on the plan. *The plans shall be revised accordingly.*
 11. Corner markers should be set at the new property lines and at property line intersection points. *The plans will be revised accordingly.*
 12. The applicant should provide the Board with an update on the June 23, 2011 letter from the Hunterdon County Planning Board which granted conditional approval subject to several conditions. Have these issues been addressed? *The applicant shall provide to the satisfaction of the Land Use Board Engineer and the Land Use Administrator evidence that the conditions required by the Hunterdon County Planning Board have been met.*
 13. Metes and bounds descriptions with supporting closure calculations for Lots must be provided to this office for review and approval. The legal deed descriptions must be provided to the Board Attorney and this office for review and approval as well.” *The applicant need provide a subdivision deed(s) which are acceptable to the Land Use Board Attorney and the Land Use Board Engineer for their approval and file same.*

2. Revised plan shall be submitted to the Land Use Board Engineer for his approval which shall incorporate all the requirements of this resolution and housekeeping items within 90 days of the adoption of the within resolution. Subsequent revisions shall be made within 30 days of the request by the Land Use Board Engineer.

3. The applicant shall comply with all rules, regulations, ordinances and statutes of the Federal, State, Highlands, Hunterdon County (for the easement through Lot 24.01 to Oldwick Road) and Local Municipal Governments that are applicable. The applicant must submit a letter to the Land Use Administrator certifying compliance with the aforesaid rules, regulations, ordinances attached.

4. The payment of all fees, escrow fees, and escrow inspection fees.

5. The applicant is to submit a subdivision deed(s) which are subject to the approval of the Land Use Board Attorney and Land Use Board Engineer. The subdivision deeds must contain the following language:

“Lot 24.02 lacks road frontage. Access is proposed through a 35 foot wide easement on Lot 24.01, Block 44 which is owned by Stavola Quarries, LLC. Prior to the construction of any structure on that lot, approval must be obtained under N.J.S.A. 40:55D-36 for the construction of a structure on a lot lacking frontage on an improved, approved public street. There is no assurance that said approval will be granted, or if approval is granted, the number of lots which may be approved, as Lot 24.02 is unusually shaped.”

6. Satisfactory proof to the Land Use Board Engineer and the Land Use Board Administrator that the subdivision will have no impact on the Mining Reclamation Plan.

7. The revised plan shall have precise interior metes and bounds descriptions but may rely on the out bound description along the road right-of-way. Any

future subdivision for Lots 24.03 or 24.04 shall require a new survey of the out bound description for the subdivided property.

Roll Call Vote

Those in Favor: Mrs. Baird, Mr. Mackie, Mr. Moriarty, Mr. Kerwin, Mr. D'Armiento and Mr. Johnstone

Those Opposed: None

- **Resolution No. 13-11** – Regan, Appl. 11-11, Block 40, Lot 5
Eligible to vote: Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. Becker and Mr. Johnstone

Mrs. Baird made a motion to adopt the following resolution. Mr. Moriarty seconded the motion. The motion carried by the following roll call vote:

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION # 11-11
RESOLUTION #13-11

WHEREAS, BRIAN and MICHELLE REGAN previously applied to the Land Use Board of the Township of Tewksbury for permission to construct an addition to the rear of their existing residence which is located at 11 James Street, Oldwick, on property designated as Block 40, Lot 5 on the Tewksbury Township Tax Map, which premises is located in VR (Village Residential) Zone, and

WHEREAS, the proposed addition was shown on the plans to have an eastern side yard of 11 feet and a western side yard of 21.10 feet, while the zoning ordinance requires minimum side yards of 30 feet in the VR Zone, and

WHEREAS, the application was approved on October 5, 2011 and a memorialization resolution was adopted on October 19, 2011, and

WHEREAS, the addition was built with a 12.51 feet eastern side yard and a 19.22 feet western side yard, and

WHEREAS, the applicants seek approval of the addition, as constructed,
and

WHEREAS, the applicants' architect John Beattie testified at the noticed public hearing on March 6, 2013 that the addition is the same size as shown on the plans, and that the deviation was caused by the angle in which the addition was constructed, and

WHEREAS, this Board expects successful land use applicants to build in accordance with the approved plans, and

WHEREAS, the Board finds that the applicants had no culpability with respect to the location of the addition, and

NOW, THEREFORE, be it resolved by the Land Use Board of the Township of Tewksbury on this 20th day of March 2013 that the application of Brian and Michelle Regan for the addition with the 12.51 foot eastern side yard and 19.22 foot western side yard be approved.

BE IT FURTHER RESOLVED that the conditions in the October 19, 2011 memorialization resolution shall remain in full force and effect.

Roll Call Vote

Those in Favor: Mrs. Baird, Mr. Mackie, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, and Mr. Johnstone

Those Opposed: None

Executive Session

- Pending Litigation

Mrs. Czajkowski and Mr. Metzler were recused from the discussion.

At 7:42 p.m. a motion was made by Mrs. Baird and seconded by Mr. Moriarty to go into executive session and adopt the following resolution:

BE IT RESOLVED, pursuant to N.J.S.A. 10:4-12 and N.J.S.A. 10:4-13 that the Tewksbury Township Land Use Board adjourn to Executive Session to discuss pending litigation and to receive advice from their attorney.

No official action will be taken during said session; and

It is expected that the discussion undertaken in Executive Session can be made public when the litigation has been settled.

Roll Call Vote

Those in Favor: Blake Johnstone, Mary Elizabeth Baird, Bruce Mackie, Michael Moriarty, Ed Kerwin, Robert Becker, Alt. #1 and Ed D’Armiento, Alt. #3

Those Opposed: None

The meeting reconvened at 7:59 p.m. by motion of Mrs. Baird and seconded by Mr. Becker.

Mr. Johnstone announced that the Board discussed pending litigation involving the Johnson Helistop and no action was taken.

Public Participation

Mr. Johnstone asked the public if there were any questions or comments regarding anything not on the agenda.

Mr. Johnstone noted that he believed that most of the residents present were there to discuss the Johnson helistop. He explained that the NJDOT has not issued a decision and therefore the Land Use Board was not prepared to comment about the situation. He asked that members of the public not re-state what the person before them puts on the record.

Nancy Held, 3 Woodedge Road, was present and read the following letter into the record:

Last week the Friends of Cold Brook Historic District asked the Township Committee to call or write to the DOT Commissioner to ask them to uphold our Master Plan, zoning regulations and Land Use Board’s decision by denying the Johnson’s application for a helistop license. Shana provided you with a copy of the remarks that I read at that meeting. We are mystified as to why the Township Committee declined to act on our request. According to our attorney, the lack of reaching out to the DOT Commissioner sent a strong message to the DOT that our town doesn’t care if the license is issued.

We learned two days ago that the DOT intends to issue the Johnson’s a helistop license. They are contemplating imposing 5 so-called restrictions. One of those so-called restrictions “limits” the Johnson’s to 30 round trips by helicopter by month, which is essentially one per day for the year. This is not only far in excess of what was granted to Trump in Colts Neck, but also far in excess of what the Johnson’s claimed to need or expect to use at Cedar Lane Farm, and I pointed this out to a member of the DOT yesterday. The DOT is also proposing to allow flights

between the hours of 7am and 10pm whereas Trump was limited to daylight flights. I also pointed out this discrepancy to the DOT yesterday.

The DOT is not proposing to prohibit refueling operations at the Johnson's site even though they prohibited them at the Trump site and even though the Johnson's did not request them from the Township. Most appallingly, in my view, is that the DOT is proposing NO penalty for the Johnsons' failure to comply with these so-called restrictions. This is consistent with what one of Trump's consultants told Colts Neck Township: "the State does not like to enforce limitations on traffic as conditions of a license. " But without enforcement and penalties, the restrictions have no teeth and are simply window dressing. It's like having a speed limit but not issuing tickets to speeders.

On a separate but related note, Miles Winder wrote to the Superior Court today requesting a 4 week adjournment to the case. He said that he has already gotten agreement to the deferment from Michael Selvaggi and Dan Bernstein. He said that "we are near a settlement of the case." Mr. Winder also states in his letter that the DOT has issued an approval of the helistop, but we do not believe that to be the case. Given that the Friends of Cold Brook Historic District are defendant-interveners in the Superior Court case, I am surprised that Mr. Winder has not asked our group if we agree to the deferment and we would ask that since the Land Use Board agreed to our position as defendant-interveners that they advise Mr. Winder that he needs to give the Friends of Cold Brook Historic District equal footing in such matters.

Miles Winder's letter also indicates to the Superior Court that "we are near a settlement of this case." We would like to know if this means that Michael Selvaggi and/or Dan Bernstein are in discussions with Miles Winder regarding DOT-imposed restrictions. If they are, then we believe that the Friends of Cold Brook Historic District should be part of such discussions and request that the Land Use Board insist on our involvement with Mr. Winder.

If Dan Bernstein has not been invited to participate in any settlement discussions, then we would like to ask the Chairman of the Land Use Board to call the DOT Commissioner as soon as possible to re-iterate why the Land Use Board denied the Johnson's request for a helistop, and to point out the significant differences between Colts Neck and Tewksbury that I read to the Township Committee last week and which is contained in the document that Shana forwarded to you today. We would also like to ask the Chairman of the Land Use Board to communicate that the so-called restrictions being considered by the DOT are, in fact, arbitrary and capricious.

We are particularly eager to have the Chairman make this call made because we believe that the helistop will receive FAR more use than what Tucker Johnson led the public to believe at the Land Use Board meetings. We have strong reason to believe that the helistop will be used by members of a private hunting club that the Johnson's are planning to set up on their land; according to a comment letter filed with the DOT, this hunting club is to be modeled after a similar club in Allamuchy which allows its members to use their helistop, and offers meals and overnight accommodations. In this regard, we are also asking the Land Use Board to propose regulations that might be needed to prevent or restrict the Johnson's from essentially running a Bed & Breakfast on their property and thereby hopefully limit the use of the helistop.

Thank you.

Mr. Bernstein explained that he did agree with Mr. Winder that the conference be adjourned for next Tuesday. If no appeal is filed, with respect to the NJDOT matter, then it renders the Superior Court case moot.

Ms. Held noted that Mr. Larry Ross wanted to be present to comment but was unable to and asked that the following statement be read into the record:

We have done our best to be factual and diplomatic and to keep expenses to the Township down. If the Township feels a settlement is the best way for us to go forward to please include us and we would do our best to raise money for any appeal that might be needed so that there would be no cost to the Township.

Mr. Bernstein noted that it would be the Township Committee that would determine the monetary matters as the Land Use Board does not have an independent source of funds.

Nancy Hance, Hollow Brook Road, commended the Land Use Board for all of the hearing hours spent on the application. Ms. Hance asked if there were any alternatives to a costly appeal. Mr. Bernstein opined that if the applicant was willing to discuss conditions it's possible the parameters would be limited; if there is an opportunity to negotiate the restrictions the Township would be willing to discuss.

Mr. Johnstone noted that once the NJDOT makes a decision it renders the Superior Court action moot. When asked who would negotiate with the Johnsons, Mr. Johnstone noted that it would likely be the Township Attorney or whomever the Township Committee designates.

There being no comments or questions, Mr. Johnstone closed the public participation portion of the meeting.

Mrs. Czajkowski and Mr. Metzler returned to the meeting at this time.

Board Discussion/Action Items

➤ Residential Generators and A/C Condensers

Ms. Goodchild noted a discussion that took place approximately a month ago about residential generators and a/c condensers and exempting them from zoning requirements. At the time the Board focused on setbacks and came to the conclusion that it would not recommend any deviation from the setbacks. Ms. Goodchild went on to explain that there is an issue with generator permits and coverage; many generator permits are being denied because the generator pad exceeds the coverage limitation for the district. She asked the Board if they would like to recommend to the Township Committee that generators and a/c condensers be exempt from the impervious coverage calculations. Ms. Goodchild and Mr. Burr suggested limiting it to 100 sq. ft. total. Mr. Johnstone was in favor of the exemption and felt that the pads for generators and a/c condensers are of little or no impact on a property.

Mr. Metzler made a motion that the Land Use Board makes a recommendation to the Township Committee that they exempt generators and a/c condensers (and the manufacturer's enclosure) up to 100 sq. ft. from impervious coverage. Mrs. Baird seconded the motion. All were in favor.

James McGinnis and Lori Anderson, 33 Hill and Dale Road, were present and supported the Board's recommendation.

- Escrow Closing (Bond) - Abbey Estates/H&M Investment Co. - \$2,0667.67

Mrs. Baird made a motion to close the above referenced escrow and return the balance to the applicant. Mr. Becker seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Those in Favor: Mrs. Baird, Mr. Mackie, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. Becker, Mr. Metzler, Mr. D'Armiento and Mr. Johnstone

Those Opposed: None

- Master Plan Consistency Review pursuant to MLUL 40:55D-26a – Ord. #13-2013

Ms. Goodchild noted that Ord. No. 13-2013 is the ordinance that deals with the recent Master Plan amendment regarding the Village Residential Zoning and the fee schedule amendment for residential generators.

Mrs. Baird made a motion to find the above referenced ordinance not inconsistent with the Master Plan. Mrs. Czajkowski seconded the motion. All were in favor.

Public Hearing

- Newell
Appl. No. 12-05
Block 34, Lot 13.01
Amended Side Yard Setback

Walter Wilson, attorney on behalf of Tim Newell, was present and explained that this was a previously granted side yard setback variance.

John Timothy Newell, 20 Meadow Lane, was present and sworn in by Mr. Bernstein. Mr. Newell explained that the Board granted a side yard setback variance for the construction of an addition to an existing barn. He failed to notice that when his surveyor, Steve Parker, prepared the plans for the addition the addition was shown flush with the front of the barn but it was never meant to be constructed that way. When the as-built was submitted to Mr. Burr it was discovered that the building was an additional 7 feet into the side setback. Mr. Newell noted that he discussed the change with the neighbor most affected and that neighbor is present if the Board would like to hear from him. Mr. Wilson noted that the dimensions of the addition are the same as originally planned. When asked, Mr. Burr noted that the variance was granted for 30.5 feet from the side property line to the closest portion of the addition and it was constructed at 26.64 feet.

Mr. Johnstone noted that this is the reason why the Land Use Board recommended to the Township Committee that a foundation location survey be required. Ms. Goodchild noted that the Township Committee rejected the recommendation and will not make a foundation location survey a requirement but she noted that the Land Use Board could as part of any variance condition.

There being no questions from the Board, Mr. Johnstone opened the meeting up to the public for questions.

Michael Gupko, 22 Meadow Lane, was present and sworn in by Mr. Bernstein. Mr. Gupko noted that he is the neighbor most affected and he has no issue with the addition and the deviation from the variance approved.

When asked by Mr. Becker if there was an expansion of the impervious coverage, Mr. Burr noted that one of the conditions of the approval was that Mr. Newell reduces the coverage on the property. It was highlighted on the as-built plan the area of impervious to be removed and an inspection was done. Mr. Metzler noted that by pushing the addition back Mr. Newell added 7 feet of driveway which added 182 sq. ft. of impervious surface (the as-built also shows the addition of the gravel driveway); approximately 200 sq. ft. of coverage added.

Mr. Johnstone opened the meeting up to the public for additional questions or comments. There being none, Mr. Johnstone closed the public portion of the meeting.

When asked by Mrs. Baird if the added impervious coverage was within what was approved, Mr. Burr responded in the negative. It was the consensus of the Board to allow the overage without requiring Mr. Newell to remove any additional impervious coverage.

Mr. Metzler made a motion to approve the addition with the modified side yard setback. There was a slight increase in impervious coverage but it was minor in nature. Mr. Moriarty seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Those in favor: Mrs. Baird, Mr. Mackie, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. Metzler, Mr. D'Armiento and Mr. Johnstone

Those Opposed: Mr. Becker

Public Hearing

- Newell
- Appl. No. 12-16
- Block 34, Lot 13.01
- Use Variance
- Action deadline – 5/08/13**

Walter Wilson, attorney, was present representing Mr. Newell.

John Timothy Newell, 20 Meadow Lane, was present and sworn in by Mr. Bernstein.

Mr. Wilson explained that Mr. Newell is requesting a modification to a condition of an earlier resolution approved by the Tewksbury Township Board of Adjustment on February 23, 1998, Appl. No. 98-02. Mr. Bernstein marked the minutes and resolution into the record as Exhibits LUB-1 (Resolution) and LUB-2 (Minutes of February 23, 1998). Mr. Wilson had no objection to the marking of the exhibits into the record.

Mr. Wilson explained that the conditions (No's 1 and 2) of the resolution provided that the applicant shall permit no tenant to rent or utilize the additional dwelling unit on the premises and that the applicant limit the use of the dwelling unit to his father-in-law and upon departure of his father-in-law the kitchen unit shall be eliminated and the premises shall become a one (1) family house. Mr. Wilson explained that during the Melick's ownership the father-in-law moved away and a tenant was allowed to occupy the unit. Mr. Newell purchased the property approximately one (1) year ago and he obtained a certificate of continued occupancy, which includes a zoning review, from the Zoning Officer which confirmed that there were no zoning violations and there was a tenant in the unit at the time of the inspection. Mr. Wilson noted that it was brought to Mr. Newell's attention at the variance meeting for the addition to the barn that he was not permitted to have the second dwelling unit. Mr. Wilson noted that it is not their belief that this creates a two (2) family home. He also noted that there is access to the unit is from the outside but it is also connected to the main part of the dwelling through a doorway.

Mr. Newell explained that he bought the house because it had the apartment; the apartment met his future needs. He explained that there was nothing disclosed by the former owner that there was a violation and they got a certificate of continuing occupancy from the Township which further confirmed that there was no violation. When he applied for the variance for the addition to the barn his neighbor, Mr. Krueter, pointed out to the Township that there was an illegal apartment. Mr. Newell explained that he called Randy Benson, Zoning Officer and Mr. Benson told him there was a contingency on the variance but the former owner had come before the Board to make it permanent and he agreed to find the paperwork to resolve the issue. Three (3) weeks later he got a call from the Township Administrator Jess Landon and they met and he informed Mr. Newell that the CO for the property was issued in error. Mr. Landon offered to resolve the issue through the Township Committee. Mr. Newell noted that he has since discovered that the Township Committee is not authorized to resolve variance matters so he decided to apply to the Land Use Board to resolve the issue.

When asked about the apartment floor plan, Mr. Newell explained that it has its own driveway and entrance. It has been used as an apartment for 15 years and without any complaints by neighbors. When asked about the number of bedrooms in the apartment, Mr. Newell responded one (1) in the apartment and three (3) in the main house. When

asked the number of rooms in the apartment, Mr. Newell indicated that there is a living room, a kitchen, a bedroom, a bathroom and a mud room.

Mr. Newell explained that he does not want to sue the Township or disturb any of his neighbors. When asked by Mr. Wilson about the future needs, Mr. Newell explained that he and his wife would like a place for his mother-in-law. When asked, Mr. Newell noted that he does not want the use restricted to just his mother-in-law and wants it to be an apartment.

Mr. Johnstone opened the meeting up to questions by the Board members.

When asked by Mr. Metzler about the current tenant, Mr. Newell explained that he knows him and he has resided there for three (3) years before he acquired the property. When asked if he is charged rent, Mr. Newell responded in the positive.

When asked by Mr. Becker if the same tenant resides in the apartment, Mr. Newell responded in the positive. When asked if he was provided with a tenant lease from the prior owner, Mr. Newell explained that the prior owner did not have a lease with the tenant but he signed a lease with him when he bought the property. When asked if he had an attorney when he closed on the property, Mr. Newell responded in the positive. Mr. Becker cited deed book and page and asked Mr. Newell if any of the documents were deed restrictions that detailed the 1998 variance limitation. Mr. Newell noted that they were not presented to him and there was no disclosure by the former owner. Mr. Wilson noted that one document was a conveyance instrument conveying title to Mr. Newell and the other was a mortgage. When asked if the seller was Shelby Melick, Mr. Newell responded in the positive. When asked how she is related to Roger Melick who notarized the application before the Board, Mr. Newell noted that Roger Melick is Shelby Melick's ex-husband. Mr. Becker noted that he has a hard time voting in favor of the application when Mr. Newell had legal representation and he knew the tenant in the apartment prior to taking possession. Mr. Newell noted that it was presented to him as a legal apartment and there was no disclosure in the seller's disclosure form that there was any variance violation and the Zoning Officer signed off on the inspection. Mr. Newell noted that according to the Township Administrator, Mr. Landon, he is the victim and the Township wanted to resolve it at no cost to the property owner. When asked what Mr. Landon suggested, Mr. Newell explained that Mr. Landon suggested that the Township Committee take action on a quick claim deed. Mr. Newell explained that when he presented it to Mr. Wilson he explained that it was of no benefit other than getting the town off the hook. Mr. Newell noted that if Mr. Benson had done his job he would have been alerted to the violation and he would not have proceeded with the purchase. When asked if the inspection by Mr. Benson was done before the closing, Mr. Newell responded in the positive. Mr. Wilson entered into the record the Certificate of Inspection by Randy Benson marked as Exhibit A-1. Mr. Becker noted that the multiple listing agreement dated June 3, 2011 listed the property as a four (4) bedroom, 4.5 bathroom for \$877,500 and asked Mr. Newell if he had any engineering inspections done to verify the septic tank capacity. Mr. Newell responded in the positive and noted that

the septic system is sized properly for the number of bedrooms. When asked about the current lease with the tenant, Mr. Newell explained that it requires 60 day notice.

When asked by Mr. Kerwin if the listing agreement addressed the apartment, Mr. Newell noted that it referenced it as an in-law suite. When asked who the current tenant is, Mr. Newell referenced Ron Cording. When asked if there was anything disclosed by the prior owner regarding the apartment, Mr. Newell responded in the negative. When asked if the prior owner said it could be used as a rental unit, Mr. Newell explained that there was a tenant in the apartment at the time. When asked if Ms. Melick said it could be used as a rental unit, Mr. Newell responded in the positive and he assumed it was a rental apartment based on the information he was given. When asked if Ms. Melick mentioned that she came to the Land Use Board, while she was marketing the property, requesting to make the apartment a legal rental unit, Mr. Newell responded in the negative. He explained that he asked Ms. Melick after the issue came up and she said it was a variance violation that wasn't disclosed and she went before the Land Use Board but failed to follow through with the amendment. Mr. Newell added that he thinks that's why Mr. Benson signed off on the Certificate of Occupancy because he thought that Ms. Melick followed through.

When asked by Mrs. Czajkowski if Ms. Melick provided him with any documentation that the unit was a legal rental, Mr. Newell responded in the negative. Mr. Newell noted that he just assumed it was legal since it was a separate unit with a current tenant. When asked if Ms. Melick showed him the permits, Mr. Newell responded in the negative but noted that the disclosure statement indicates that all permits were secured.

When asked by Mr. Johnstone if the area in question is a single family residence area, Mr. Newell responded in the positive. When asked if he saw any other apartments in the area of the subject site when he purchased the property, Mr. Newell responded in the negative but he was not aware of zoning laws and what was permitted or not permitted. When asked if he had purchased homes before, Mr. Newell responded in the positive. When asked if he is aware that the attorney has an obligation to check out the history of the property, Mr. Newell responded in the negative but indicated that he relied on the deed and the title search. When asked if he has title insurance, Mr. Newell responded in the positive and noted that variances don't generally show up on title. When asked if he was aware that the Melick's were granted a variance specifically for their father in law and the variance likely would not have been granted otherwise, Mr. Newell indicated that he understands that now. When asked if he understands that he is asking the Land Use Board to approve a two (2) family residence in a single family area, Mr. Newell responded in the positive, noting that the apartment in question has existed that way for a number of years. Mr. Wilson objected to the question. Mr. Johnstone noted that he asked the question from a common sense standpoint.

When asked by Mr. Moriarty how long he lived on Potterstown Road, Mr. Newell responded four (4) years prior to purchasing the Meadow Lane property. When asked if he knew Mr. Cording prior to the purchase, Mr. Newell responded in the positive and noted that he works in the same industry. When asked how long he has known Mr.

Cording, many years was Mr. Newell response. When asked how many years he has known Roger Melick, Mr. Newell responded seven (7) but never when he lived at Meadow Lane. When asked if he would be amendable to restricting the use of the apartment as a low income COAH unit, Mr. Newell noted that he's not opposed to the idea but he doesn't fully understand the concept and would need to consult with his attorney.

When asked by Ms. Goodchild if the tenant is the same Ron Cording that owns a home on Hollow Brook Road, Mr. Newell explained that he divorced and sold that home. Ms. Goodchild noted that a Ron Cording recently applied for a fence permit on property on Hollow Brook Road. Mr. Metzler noted that he recently saw Mr. Cording's name on a real estate transfer for property he purchased on Hollow Brook Road.

When asked by Mr. Bernstein if Mr. Cording will be moving out, Mr. Newell responded in the positive and opined that he would leave in the summer. When asked if it was a coincidence that Roger Melick notarized the current application and he was the same person that applied for the variance in 1998, Mr. Newell indicated that he brought it up to Mr. Melick and he was surprised that it hadn't been disclosed. Mr. Bernstein noted for the Board that Mr. Newell has been speaking of estoppel and Mr. Bernstein noted that the same thing was brought up in the Wood/O'Neil case. He explained that the Land Use Board cannot decide the estoppel issue, only the court can; if there was a mistake it is not the basis for granting a variance. Mr. Bernstein read into the record several court cases supporting this. Mr. Bernstein went on to say that the citing of the cases is to prove that the Board is not to grant relief on the basis that Mr. Newell was misled. He may have an estoppel case against the Township but the Land Use Board needs to decide on the basis of the statutory criterion that Mr. Newell's Planner will discuss. Mr. Wilson agreed with Mr. Bernstein.

There being no additional questions from the Board, Mr. Johnstone opened the meeting up to the public.

Tony Koester, attorney, was present representing Hank and Ruth Krueter, 19 Meadow Lane. When asked by Mr. Koester if he ever asked Roger Melick anything about the apartment, Mr. Newell responded in the negative and explained that it wasn't Mr. Melick's home. When asked if he knew that Mr. Melick had been married to Shelby Melick, Mr. Newell responded in the positive. When asked if he knew who Mr. Melick works for, Mr. Newell responded the Doggett Corporation. When asked if Mr. Doggett was Shelby Melick's father that lived in the apartment, Mr. Newell responded in the positive. When asked if Mr. Doggett was the owner of the Doggett Corporation, Mr. Newell responded in the positive. When asked if he works for or has any affiliation with the Doggett Corporation, Mr. Newell responded in the positive. When asked if he had that affiliation prior to purchasing the home, Mr. Newell responded in the positive. When asked if he appeared on April 18, 2012 regarding the side yard setback variance, Mr. Newell responded in the positive. When asked if he recalled stating that he bought the house for the purposes of the in-law suite, Mr. Newell responded in the positive. When asked if he remembers being questioned about a current renter and that his

testimony was that he has a friend staying there, Mr. Newell responded in the positive. When asked if he disclosed to the Board that he had a lease, Mr. Newell responded that he was asked if the renter was paying rent and his testimony was that he was paying rent. Mr. Koester entered into the record the Land Use Board minutes of April 18, 2012 as Exhibit O-1.

There being no additional questions from the public, Mr. Johnstone closed the public portion of the hearing.

Mr. Bernstein asked Mr. Newell if he would agree to a limitation (similar to the Thompson condition) that would allow the apartment to remain but it could only be used by family or guests for a short period of time and could not be rented. Mr. Newell noted that Mr. Thompson was first offered a COAH unit. Mr. Bernstein asked if he would consider a COAH unit or an approval similar to the Thompson approval. Mr. Wilson noted that his client would be willing to accept a condition that would require the one occupant of the home to be the owner (owner occupied). Mr. Wilson asked if the Board could take a short break to discuss things with his client before the Planner testifies.

When asked by Mr. Moriarty if, when there is a break in tenancy, a new Certificate of Occupancy inspection is performed, Ms. Goodchild noted that she believed that the Township Code requires an inspection and that the tenant needs to be registered with the Township Clerk. Mr. Wilson opined that at a minimum it requires a smoke and carbon monoxide detector inspection.

The Board took a break at 9:32 p.m. and reconvened at 9:45 p.m.

Mr. Johnstone announced that Mr. Wilson and his client wish to adjourn the hearing to another evening at which time the Planner will testify. The hearing will continue on April 17, 2013 at 7:30 p.m. with no notice required unless the application is amended at which time the applicant will need to provide new notice.

MISCELLANEOUS BOARD DISCUSSION ITEMS

As follow up to the recommendation that was sent to the Township Committee regarding foundation location surveys Mr. Moriarty explained that at the time he was concerned that it was too broad. Mr. Moriarty proposed that it be required for only setback variances. When asked why the Township Committee rejected the recommendation, Ms. Goodchild opined cost to residents. When asked about the cost, Mr. Burr opined approximately \$450. It was the consensus of the Board that it would be required as condition of the resolution for variance applications. Mr. Bernstein agreed to put it in future side yard setback variance resolutions moving forward.

Mr. Johnstone encouraged Board members to review *Berninger vs. Board of Adjustment* prior to the next Newell hearing. Mr. Bernstein noted that there would be commentary at the next hearing on that particular point. Mrs. Baird noted that there are no current Board members that were on the Board of Adjustment in 1998.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:55 p.m. by motion of Mr. Becker and seconded by Mr. Moriarty.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator